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### Welcome to the age of sports injury lawsuits

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June 13, 1989

## WELCOME TO THE AGE OF SPORTS INJURY LAWSUITS

By Carol Susan Woodruff  
UM News and Publications

Not all sports contests are on the playing field or in the gym. More than ever, they're taking place in the courtroom.

A California teacher won \$14.7 million in a lawsuit against the maker of gym equipment involved in an accident that left him a quadriplegic. Two Texas students hurt in a school game of tug-of-war successfully sued their school district and 10 of its employees for \$10.9 million. A Columbia Falls man injured in a snowmobile accident received more than \$2.5 million from the Montana Department of Fish, Wildlife and Parks.

"The increase in sports injury lawsuits has been phenomenal," says Gary Nygaard, a University of Montana health and physical education professor. Ron Baron, executive director of the Center for Sport Law and Risk Management in Dallas, dates the increase to 1981 or 1982.

One indication of the proliferation of sports injury lawsuits can be found in the recently released second edition of "Law for Physical Educators and Coaches," a book Nygaard wrote with Missoula lawyer Tom Boone. The book is more than double the length of their 1981 edition, with new cases and recommendations accounting for much of the increased length. And the cases they include in their book are only reported ones.



"You have to realize that most lawsuits aren't reported," Boone says. "It's usually only the ones that are tried and appealed. Probably 5 to 10 percent are tried, and then a small percent of those are appealed."

Sports injury lawsuits are an American phenomenon, Nygaard and other experts in the area say, and courses on the subject -- unavailable 20 years ago -- are now required for anyone in the country wishing to become an exercise professional.

Americans' increasing awareness of their legal rights partly accounts for the growing number of lawsuits against coaches, physical educators and other exercise professionals, Nygaard says.

Another explanation, Nygaard and Boone say, is that most states have passed laws allowing people to sue governmental institutions. By contrast, in the 1920s a football player blinded in one eye and seriously injured in the other by lime on a football field was prevented by governmental immunity from suing the Minnesota high school responsible for his condition.

Montana legislators dispensed with governmental immunity in 1972, Nygaard says. In 1976 they limited settlements against governmental agencies to \$300,000 per person or \$1 million per incident, and then a few years ago the state Supreme Court threw out those limits. In the past month, the Montana Supreme Court restored some immunity to governmental agencies, he notes.

Nygaard says states like Montana have also switched from a



contributory negligence to a comparative negligence theory in lawsuits, giving rise to more litigation.

Under the old theory, still in effect in the early 1970s, a person couldn't recover any money in a lawsuit if his negligence contributed to his injury. Now -- as long as he's less than 50 percent negligent -- he'll be compensated for his injury if he can prove the defendant was more than 50 percent negligent. For example, if a plaintiff were 40 percent negligent and the defendant 60 percent, the plaintiff's award would be reduced by 40 percent.

In addition, since the 1970s, courts have held exercise professionals to what Nygaard calls "a higher standard of care." At one time the professionals had to prove only that they'd acted as reasonable and prudent people; now they must show they've acted as reasonable and prudent professionals.

Dallas' Ron Baron adds that courts have eroded the doctrine of assumption of risk. That doctrine states that if people expose themselves to certain kinds of known dangers, they can't collect damages if they're injured.

"We probably don't have any more injury cases than we've had in the past," says sports management Professor Herb Appenzeller of North Carolina's Guilford College, who's written seven books on sports injury cases and works with the Center for Sport Law and Risk Management.

"I think what we've really done is added more litigation to



the area," Appenzeller says. Examples include cases involving defamation of character or the lack of due process, such as when a coach is fired or an athlete suspended.

Americans have also begun suing far more people related to an injury than in the past, he adds, among them trainers, officials and doctors. "We're trying to sue everybody we can sue with the hope that somebody's insurance will get involved and that there'll be money available."

"I'm very sympathetic to people who think that people are getting money (for their injuries) for no reason," says Libby lawyer Ann German, who helped Libby High School student Becky Puckett collect \$100,000 from her school district when she received a concussion during a "powderpuff football" game.

But German stresses that juries, a "real conservative, very representative cross-section of society," vote only for awards they're satisfied a plaintiff deserves. And such awards serve another purpose besides taking care of the injured person's financial needs.

"The theory that I have generally about tort (civil) law is that the whole purpose of the law should be not necessarily to recover damages for the individual plaintiff who's injured but should be aimed at trying to change the behavior of the person who caused the injury," she says.

Insurance companies could reduce the number of lawsuits through risk assessment, German adds, rather than "just paying



the occasional settlement and hoping that everybody doesn't get hurt in the meanwhile."

The rising number of sports injury lawsuits, coupled with changes in sports law, have dramatically altered the way exercise professionals do business in this country, Nygaard says.

"The old stereotype of a coach was of a demagogue, a dictator," he says. "You don't dare be a dictator anymore." Ethics aside, a coach can no longer afford to tease a student or call him a wimp or hypochondriac to get him to play a sport. He cites the case of a man convicted of misdemeanor assault for grabbing a 12-year-old Roundup baseball player and trying to hypnotize him into becoming a better pitcher.

"There's even some question whether you should use words like 'aggressively' anymore," Nygaard continues. "Maybe you should tell your players to play 'assertively' because in sports psychology, 'aggression' implies an intent to injure."

In addition, a coach can no longer -- without fear of lawsuits -- simply warn his players their sport is risky. Since 1978, Nygaard says, courts across the country have held that a coach must make sure his athletes know, understand and appreciate the inherent risks of their sport.

"It's no longer sufficient to tell your players that each year maybe 10 to 15 football players are paralyzed nationally," he says. "You have to somehow get across to them the impact being paralyzed would have on their lives."



One way to do that is showing a movie like "Warning: It Could Happen to You," which focuses on the life of Seattle's Chris Thompson, paralyzed in a high school football game.

Other signs of the times include the removal of trampolines from schools because many companies won't insure schools against the injuries they cause. Nygaard knows of no Montana schools where powderpuff football has been played by junior and senior high school girls since the Puckett case in Libby.

In addition, a coach or teacher doesn't dare let his students play games called things like "Kill" or "Jungle Rules." "You can still play those games, but you have to change their names so they don't imply survival of the fittest," Nygaard says.

Exercise professionals not only face a high risk of being sued these days but also must pay insurance premiums that have skyrocketed over the past three to five years, Nygaard says. His own payments have tripled, for example.

Nygaard, author of "Sport Litigation: A Casebook" and co-author with Tom Boone of "Coaches' Guide to Sport Law," has consulted or been a witness in about 12 sports injury lawsuits around the country. "I try to work for defendants usually because I think exercise programs are valuable, and I hate to see activities stopped," he says.

He also developed and teaches the UM course "Legal Issues in Physical Education and Sport." "The common reaction to my course is, 'I don't know if I want to coach,'" he says. At least his



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students can make informed career decisions by the time they finish his class, he adds.

To his students, as prospective exercise professionals, and to people already in the field he offers this advice: "Know what your legal duties are and how to fulfill them, and make sure that you have at least \$1 million of liability insurance and that it covers you for everything you do."

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